



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF LOIZOU AND OTHERS v. TURKEY

(Application no. 16682/90)

FINAL JUDGMENT
(Just Satisfaction)

STRASBOURG

24 May 2011

FINAL

28/11/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Loizou and Others v. Turkey,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,

Lech Garlicki,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Işıl Karakaş,

Ledi Bianku, *judges*,

and Fatoş Aracı, *Deputy Registrar*,

Having deliberated in private on 3 May 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 16682/90) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by twenty-six Cypriot nationals and three registered companies, on 26 January 1990.

2. In a judgment delivered on 22 September 2009 (“the principal judgment”), the Court held that the administrator of the estate of applicant no. 9 had standing to continue the present proceedings in the deceased’s stead, decided to strike the application out of the list of cases in so far as it concerned applicants nos. 18 to 29 and to continue the examination of the application with regard to applicants nos. 1 to 17. The Court further dismissed various preliminary objections raised by the Turkish Government and found continuing violations of Article 8 of the Convention by reason of the complete denial of the right of applicants nos. 1, 2, 3, 4, 7, 8, 9, 10, 12, 16 and 17 to respect for their homes and of Article 1 of Protocol No. 1 to the Convention by virtue of the fact that applicants nos. 1 to 17 were denied access to and control, use and enjoyment of their properties as well as any compensation for the interference with their property rights. Finally, it found that it was not necessary to examine the applicants’ complaints under Articles 1 and 14 of the Convention and the complaint of applicant no. 14 under Article 8 of the Convention (see *Loizou and Others v. Turkey*, no. 16682/90, §§ 47, 52, 53, 59, 60, 76, 83, 89 and 92, and points 1-8 of the operative provisions, 22 September 2009).

3. Under Article 41 of the Convention the applicants sought just satisfaction for the deprivation of their properties concerning the period

between January 1987 and 1999. Several valuation reports, setting out the basis of their loss, were appended to their observations. Furthermore, the applicants claimed approximately 68,344 euros (EUR) each for non-pecuniary damage and a sum for the costs and expenses incurred before the Court.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it in whole and invited the Government and the applicants to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, §§ 120 and 123, and point 9 of the operative provisions).

5. On 4 March 2010 the Court invited the applicants and the Government to submit any materials which they considered relevant to assessing the 1974 market value of the properties concerned by the principal judgment. The applicants were also invited to submit written evidence that the properties at stake were still registered in their name or to indicate and substantiate any transfer of ownership which might have taken place.

6. The applicants and the Government each submitted observations on these matters. On 21 June 2010 some of the applicants produced certificates of ownership of Turkish-occupied immovable properties issued by the Department of Lands and Surveys of the Republic of Cyprus. In particular, it appears from these documents that in April and May 2010 the building sites and fields described in paragraphs 13 and 14 below were still registered in the name of applicant no. 9 (Mr Kostas Kalisperas), with the exception of the plot of land described in paragraph 14 (p) below, on which his house was located. This plot was registered in the name of a company, Georgike Epichrisis Kalisperas Ltd.

7. In a judgment delivered on 26 October 2010 (“the partial judgment on just satisfaction”) the Court dismissed the Government’s request to stay the examination of the applicants’ claims for just satisfaction, awarded various sums in respect of pecuniary and non-pecuniary damage to applicants nos. 1 to 8 and 10 to 17, held that the respondent State should pay EUR 15,000 in respect of the costs and expenses incurred by all the applicants, and dismissed the remainder of the claims for just satisfaction of applicants nos. 1 to 8 and 10 to 17 (see *Loizou and Others v. Turkey* (partial judgment – just satisfaction), no. 16682/90, §§ 7-11 and 45-51, and points 1-3 of the operative provisions, 26 October 2010). The Court furthermore noted that in respect of applicant no. 9 the expert appointed by the authorities of the “TRNC” had indicated the open-market value of only one of the properties concerned by the principal judgment and had failed to give any estimate of the sums which might have been offered by the Immovable Property Commission (hereinafter “the IPC”). The Court therefore held that the question of application of Article 41 in respect of the pecuniary and non-pecuniary damage suffered by applicant no. 9 was not ready for decision; it

further reserved the said question and invited the Government to submit, within four weeks, their estimates of the 1974 open-market values of all the properties of applicant no. 9 and of the sums which the IPC might have offered to the administrator of his estate under the heads of loss of use and current value of the properties (see *Loizou and Others v. Turkey* (partial judgment – just satisfaction), cited above, §§ 52-53, and point 4 of the operative provisions).

8. The Government submitted their observations on these points on 21 December 2010. The administrator of the estate of applicant no. 9 submitted comments on 31 January 2011.

THE LAW

9. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary and non-pecuniary damage

1. *The parties' submissions*

(a) Applicant no. 9

10. In his just satisfaction claims of September 1999, applicant no. 9 (Mr Kostas Kalisperas – hereinafter “the applicant”) requested an award in respect of pecuniary damage. He relied on an expert report assessing the value of his losses, which included the loss of annual rent collected or expected to be collected from renting out his properties, plus interest from the date on which such rents were due until the date of payment. The rent claimed was for the period from January 1987, when the respondent Government accepted the right of individual petition, until 1999. The applicant did not claim compensation for any purported expropriation, since he was still the legal owner of the properties.

11. The starting point of the valuation report was the rental value of the properties in 1974, calculated on the basis of a percentage of their market value or assessed by comparing the rental value of similar land at the relevant time. This sum was subsequently adjusted upwards by applying an average annual rental increase varying between 5% and 12%. Compound interest for delayed payment was applied at a rate of 8% per annum.

12. In 1999 the applicant sought 1,999,447 Cypriot pounds (CYP, approximately EUR 3,416,255). According to the expert appointed by him, the overall 1974 market values of the six building sites mentioned in paragraph 13 above (three of which had a total area of 2,008 sq. m) was CYP 78,614 (approximately EUR 134,319), while their total rental value was CYP 4,716 (approximately EUR 8,058). The 1974 annual rent obtainable from the fields described in paragraph 14 above was CYP 14,688 (approximately EUR 28,513), while the 1974 market value of the applicant's house (Pano Dikomo, plot no. 18, sheet/plan XII/54W1, registration no. 825) was CYP 19,600 (approximately EUR 33,488) and its rental value was CYP 1,087 (approximately EUR 1,857).

13. According to the certificates of affirmation of ownership of Turkish-occupied immovable properties produced in June 2010 by the administrator of the applicant's estate (see paragraph 6 above), the six building sites owned by Mr Kostas Kalisperas were registered as follows:

- (a) Kyrenia/Vasilia, sheet/plan 11/05, plot no. 496 (previous 140/10), registration no. 5642; building site; share: whole; area: 799 sq. m;
- (b) Kyrenia/Vasilia, sheet/plan 11/05, plot no. 497 (previous 140/11), registration no. 5643; building site; share: whole; area: 725 sq. m;
- (c) Kyrenia/Vasilia, sheet/plan 11/05, plot no. 520 (previous 140/34), registration no. 5666; building site; share: whole; area: 484 sq. m;
- (d) Kyrenia/Pano Kyrenia, sheet/plan 12/21, block 6; plot no. 50; registration no. 3741; building site; share: whole; area: not indicated;
- (e) Kyrenia/Pano Kyrenia, sheet/plan 12/21, block 6; plot no. 60; registration no. 3747; building site; share: whole; area: not indicated;
- (f) Kyrenia/Pano Kyrenia, sheet/plan 12/21, block 6; plot no. 61; registration no. 3748; building site; share: whole; area: not indicated.

14. The fields owned by the applicant were registered as follows (as indicated in paragraph 6 above, the field referred to under (p) was registered in the name of the company Georgike Epichrisis Kalisperas Ltd):

- (a) Kyrenia/Kato Dikomo, sheet/plan: 21/04, plot no. 59; registration no. 1719; field; share: whole; area: 74,249 sq. m;
- (b) Kyrenia/Kato Dikomo, sheet/plan: 21/04, plot no. 233 (previous 20 21 53 54); registration no. 1693; field; share: whole; area: 76,255 sq. m;
- (c) Kyrenia/Kato Dikomo, sheet/plan: 21/13, plot no. 3; registration no. 2088; field; share: whole; area: 18,730 sq. m;
- (d) Kyrenia/Kato Dikomo, sheet/plan: 21/13, plot no. 22; registration no. 2107; field; share: whole; area: 1,338 sq. m;
- (e) Kyrenia/Kato Dikomo, sheet/plan: 21/13, plot no. 23; registration no. 2108; field; share: whole; area: 2,007 sq.m;
- (f) Kyrenia/Kato Dikomo, sheet/plan: 21/13, plot no. 24; registration no. 2109; field; share: whole; area: 2,342 sq. m;
- (g) Kyrenia/Kato Dikomo, sheet/plan: 21/13, plot no. 26; registration no. 2111; field; share: whole; area: 632 sq. m;

- (h) Kyrenia/Kato Dikomo, sheet/plan: 21/13, plot no. 21; registration no. 2106; field; share: whole; area: 1,673 sq. m;
- (i) Kyrenia/Kato Dikomo, sheet/plan: 21/13, plot no. 30; registration no. 2115; field; share: whole; area: 6,021 sq. m;
- (j) Kyrenia/Kato Dikomo, sheet/plan: 21/13, plot no. 32; registration no. 2117; field; share: whole; area: 28,094 sq. m;
- (k) Kyrenia/Kato Dikomo, sheet/plan: 21/13, plot no. 33; registration no. 2118; field; share: whole; area: 4,014 sq. m;
- (l) Kyrenia/Kato Dikomo, sheet/plan: 21/13, plot no. 10; registration no. 2095; field; share: whole; area: 17,726 sq. m²;
- (m) Kyrenia/Kato Dikomo, sheet/plan: 21/13, plot no. 25; registration no. 2110; field; share: whole; area: 920 sq. m;
- (n) Kyrenia/Kato Dikomo, sheet/plan: 21/13, plot no. 20; registration no. 2105; field; share: whole; area: 37,125 sq. m;
- (o) Kyrenia/Kato Dikomo, sheet/plan: 21/05, plot no. 72; registration no. 1857; field; share: two-thirds; area: 28,429 sq. m;
- (p) Kyrenia/Pato Dikomo, sheet/plan: 12/54, plot no. 18; registration no. 825; field; share: whole; area: 8,696 sq. m;
- (q) Kyrenia/Sichari, sheet/plan: 12/54, plot no. 315; new reference no. 0/282; field; share: whole; area: 1,221 sq. m;
- (r) Kyrenia/Sichari, sheet/plan: 12/54, plot no. 251; registration no. 267; field and trees; share: whole; area: 6,689 sq. m;
- (s) Nicosia/Morphou/Ayios Georgios, sheet/plan: 10/62E1+2, plot no. 35, registration no. F34; field; share: 1948634/40642560; area: 226 sq. m;
- (t) Nicosia/Morphou/Ayios Georgios, sheet/plan: 10/63W1+2, plot no. 3, registration no. G3; field; share: 1948634/40642560; area: 987 sq. m;
- (u) Nicosia/Morphou/Ayios Georgios, sheet/plan: 19/7E1+2, plot no. 6, registration no. K8; field; share: 1948634/40642560; area: 738 sq. m;
- (v) Nicosia/Morphou/Ayios Georgios, sheet/plan: 19/8W1, plot no. 23, registration no. L22; field; share: 1948634/40642560; area: 586 sq. m;
- (w) Nicosia/Morphou/Ayios Georgios, sheet/plan: 19/8E1, plot no. 26, registration no. M25; field; share: 1948634/40642560; area: 622 sq. m;
- (x) Nicosia/Morphou/Ayios Georgios, sheet/plan: 10/64E2, plot no. 142, registration no. M127; field; share: 1948634/40642560; area: 331 sq. m;
- (y) Nicosia/Morphou/Ayios Georgios, sheet/plan: 19/BE1, plot no. 150, registration no. M135; field; share: 1948634/40642560; area: 420 sq. m;
- (z) Nicosia/Kythrea/Ayios Georgios, sheet/plan: 22/3W1, plot no. 63; registration no. 2/111; field; share: whole; area: 25419 sq. m..

15. The Court was informed that the applicant had died on 14 September 2003. It held that the administrator of his estate (his granddaughter, Mrs Melita Theodoridou) had standing to continue the proceedings in his stead (see paragraph 2 above). In a letter of 28 January 2008 the latter observed that a long period had passed since Mr Kalisperas' first claims for

just satisfaction and that the claim for pecuniary loss needed to be updated according to data concerning the increase in market value of the land in Cyprus. The average increase in this respect was 10% to 15% per annum.

16. On 21 June 2010 the administrator of the applicant's estate produced a revised valuation report, which was meant to cover the loss of use for the period between 1 January 1987 and June 2010. On the basis of the criteria used in the previous report, the expert appointed by Mrs Melita Theodoridou considered that the sum due for loss of use was EUR 12,082,000.

17. The expert submitted various synoptic tables showing sales of comparable plots in the areas where the properties concerned by the principal judgment were located. He alleged that, in general, these sales showed that both the 1974 prices of the properties and the annual increase in their values, as estimated in the previous report, were fair and reasonable.

18. In his just satisfaction claims of September 1999, the applicant further claimed CYP 40,000 (approximately EUR 68,344) in respect of non-pecuniary damage. He stated that this sum had been calculated on the basis of the sum awarded by the Court in the *Loizidou v. Turkey* case ((just satisfaction), 28 July 1998, *Reports of Judgments and Decisions* 1998-IV) while taking into account the fact that the period in respect of which the claim was made in the instant case was longer. He also claimed the additional sum of CYP 70,000 (approximately EUR 119,602) with respect to the non-pecuniary damage suffered for the loss of his home.

19. In her comments of 31 January 2011, the administrator of the applicant's estate underlined that for each and every property concerned by the principal judgment she had produced either the original title deed or affirmations of ownership of Turkish-occupied immovable properties, showing that Mr Kostas Kalisperas was the owner of the relevant plots. The Government had failed to produce evidence to the contrary. In any event, the objections of incompatibility *ratione materiae* with the provisions of Article 1 of Protocol No. 1 raised by the Government had been rejected by the Court in the principal judgment. The administrator of the applicant's estate further produced a copy of a contract, dated 16 July 1968, by which Mr Kostas Kalisperas had purchased the land described in paragraph 14 (q) above; she also stated that the company which owned the plot described in paragraph 14 (p) above (Georgike Epichrisis Kalisperas Ltd) was the applicant's company. The mortgages which, according to the Government, restricted the properties described in paragraph 13 (c), (d), (e) and (f) above (see paragraph 29 below) had been suspended and declared uncollectable according to the provisions of the Debtors' Relief Act 1974 by an order of the Nicosia District Court. A copy of this order was annexed to the comments of the administrator of the applicant's estate. She finally considered that the valuations furnished by the IPC were a "shot in the dark" based on biased and incomplete reports.

(b) The Government

20. The Government submitted comments on the applicant's claims for just satisfaction on 15 September 2008, 22 June and 21 December 2010. They noted that owing to the lapse of time since the lodging of the application new situations might have arisen; these matters could be certified only by the Greek Cypriot authorities, who, since 1974, had reconstructed the registers and records of all properties in northern Cyprus and had, since 1968, been in possession of the Lands Records Registers relating to the Morphou region and to some areas of Nicosia. The administrator of the applicant's estate should be required to provide search certificates issued by the Department of Lands and Surveys of the Republic of Cyprus. Moreover, in cases like the present one, where the original applicant had passed away, questions might arise as to whether the new owners had a legal interest in the properties and whether they were entitled to pecuniary and/or non-pecuniary damages.

21. The Government further observed that the applicant had some shared properties and that it was not proven that his co-owners had agreed to the partition of the possessions. Nor, when claiming damages on the basis of the assumption that the properties had been rented after 1974, had the applicant shown that the rights of the said co-owners under domestic law had been respected.

22. In their comments of 22 June 2010 the Government observed that in the case of *Demopoulos and Others v. Turkey* ([GC] (Dec.), nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, 1 March 2010) the Grand Chamber had found that the IPC was an adequate domestic remedy for those claiming a violation of Article 1 of Protocol No. 1. Notwithstanding the adoption of a judgment on the merits, it would still be open to the administrator of the applicant's estate to apply to the IPC, which would calculate the current value and the 1974 value of the properties "in an evidence-based manner on the basis of actual data". On 27 May 2010 the IPC had sent a letter to the applicant's representative, inviting his client to introduce an application before it.

23. The Government noted that under Law No. 67/2005 the following means of redress were available: a) restitution; b) compensation; c) exchange. The relevant provisions of the law at issue are described in *Demopoulos and Others* (cited above, §§ 35-37).

24. The Government further noted that in making its assessment as regards compensation for the loss of use, the IPC had collected data from the Department of Lands and Surveys on the 1973-1974 purchase prices for comparable properties. It had also examined the development of interest rates of the Cyprus Central Bank. The loss of income was then calculated by assuming that the obtainable rent would have been 5% of the value of the properties; this last value had been modified every year on the basis of the

land market value index. Cyprus Central Bank interest rates had been applied on the sums due since 1974.

25. Being in possession of the land registers, the Turkish Cypriot authorities were in a better position than the applicant and the Greek Cypriot authorities to assess the market values of the properties in a realistic and reliable manner. The applicant had put forward exaggerated claims and had tended to inflate the 1974 value of his possessions. The Government therefore requested the Court to rule on compensation on the basis of the calculations made by the Turkish Cypriot authorities, which were “evidence-based and objective in every aspect”.

26. In June 2010, the expert appointed by the authorities of the “TRNC” indicated that the 1974 open-market value of one of the applicant’s properties was CYP 195 (approximately EUR 333). No estimate was given for the other properties. The “TRNC” authorities also failed to indicate the sums which the IPC could have offered the applicant’s heirs to compensate for loss of use and for the value of the properties.

27. On 21 December 2010 the Government observed that no pecuniary damage for loss of use could be awarded for the time which had elapsed since the applicant’s demise. They further pointed out that the “TRNC” Ministry of the Interior did not have the Land Office registries for certain areas of Nicosia and for the whole of Morphou, and had therefore not been able to verify whether the properties described in paragraph 14 (a), (d), (e), (f), (g), (h), (k), (l), (m), (n), (o), (p), (t) and (z) above were owned by the applicant in 1974. The IPC nevertheless made an offer in respect of these properties; the said offer was however conditional on the production of further proofs of ownership.

28. The Government noted that the applicant’s representative had produced written evidence showing that in 2010 his client was still the owner of twenty-one plots of land. It was not clear whether the remaining properties had been transferred to his heirs or to third persons. The IPC assumed that no transferral had been made before 15 June 2004, on which date the Court was informed of the applicant’s demise. Moreover, the “TRNC” authorities had determined that in 1974 the applicant was not the owner of the fields described in paragraph 14 (p) (which belonged to a company, Eferia Yeorghikae Epihiris Xalisperas Ltd.) and (q) (which belonged to a certain Petrou Yeorgion Filippou) above. Therefore, in the Government’s opinion no compensation should be awarded for these two plots.

29. The Government also pointed out that before 1974 the properties described in paragraph 13 (c), (d), (e) and (f) above were restricted under mortgage and argued that the administrator of the applicant’s estate should prove that these mortgages had been paid and lifted.

30. Attached to their observations of 21 December 2010, the Government produced a fresh report from the “TRNC” authorities, in which

it was indicated that it would be possible to envisage, either immediately or after the resolution of the Cyprus problem, restitution of the properties described in paragraph 14 (a), (d), (e), (f), (g), (h), (k), (l), (m), (n), (o), (p), (t) and (z) above. The IPC could also offer the administrator of the applicant's estate exchange of some of the properties concerned by the principal judgment with Turkish-Cypriot properties located in the south of the buffer zone.

31. Had the administrator of the applicant's estate applied to the IPC, the latter would have offered EUR 1,202,556.22 to compensate for the loss of use, and EUR 1,561,470.92 for the value of the properties. According to an expert appointed by the authorities of the "TRNC", the 1974 open-market value of the applicant's properties was the following:

- properties described in paragraph 13 (a), (b) and (c) above: CYP 2,250 (approximately EUR 3,844) each;
- property described in paragraph 13 (d) above: CYP 5,000 (approximately EUR 8,543);
- properties described in paragraph 13 (e) and (f) above: CYP 4,000 (approximately EUR 6,834) each;
- property described in paragraph 14 (a) above: CYP 1,665 (approximately EUR 2,845);
- property described in paragraph 14 (b) above: CYP 1,710 (approximately EUR 2,922);
- property described in paragraph 14 (c) above: CYP 420 (approximately EUR 718);
- property described in paragraph 14 (d) above: CYP 30 (approximately EUR 51);
- property described in paragraph 14 (e) above: CYP 45 (approximately EUR 77);
- property described in paragraph 14 (f) above: CYP 52 (approximately EUR 89);
- property described in paragraph 14 (g) above: CYP 15 (approximately EUR 25);
- property described in paragraph 14 (h) above: CYP 40 (approximately EUR 68);
- property described in paragraph 14 (i) above: CYP 135 (approximately EUR 231);
- property described in paragraph 14 (j) above: CYP 630 (approximately EUR 1,076);
- property described in paragraph 14 (k) above: CYP 90 (approximately EUR 154);
- property described in paragraph 14 (l) above: CYP 400 (approximately EUR 683);
- property described in paragraph 14 (m) above: CYP 25 (approximately EUR 43);

- property described in paragraph 14 (n) above: CYP 832 (approximately EUR 1,421);
- property described in paragraph 14 (o) above: CYP 42.40 (approximately EUR 72);
- property described in paragraph 14 (p) above: CYP 195 (approximately EUR 333);
- property described in paragraph 14 (q) above: CYP 100 (approximately EUR 170);
- property described in paragraph 14 (r) above: CYP 500 (approximately EUR 854);
- properties described in paragraph 14 (s), (t), (u), (v), (w), (x), (y) and (z) above: CYP 30 (approximately EUR 51) “per donum” (unit of area used in the Ottoman Empire and normally corresponding to “forty standard paces in length and breadth”).

32. It follows that according to the “TRNC” authorities, the overall 1974 market value of the applicant’s properties was close to EUR 45,575 (this sum does not include the properties whose value was determined “per donum”). The Government finally stressed that the IPC proposal should be assessed in view of the principles laid out in the Grand Chamber’s decision in the case of *Demopoulos and Others*, cited above.

2. The Court’s assessment

33. The Court reiterates that it has concluded that there had been a continuing violation of the applicant’s rights guaranteed by Article 1 of Protocol No. 1 by reason of the complete denial of his right to the peaceful enjoyment of his properties in northern Cyprus (see paragraph 76 of the principal judgment). There had also been a continuing violation of Article 8 of the Convention by reason of the denial of the applicant’s right to respect for his home (see paragraph 89 of the principal judgment). Furthermore, the Court’s finding of a violation of Article 1 of Protocol No. 1 was based on the fact that, as a consequence of being continuously denied access to his land and real estate since 1974, the applicant had effectively lost all access and control as well as all possibility of using and enjoying his properties (see paragraph 74 of the principal judgment). The administrator of his estate is therefore entitled to a measure of compensation in respect of losses directly related to this violation of the applicant’s rights as from the date of deposit of Turkey’s declaration recognising the right of individual petition under former Article 25 of the Convention, namely 22 January 1987, until the day of Mr Kostas Kalisperas’ death, namely 14 September 2003 (see paragraph 15 above; see also, *mutatis mutandis*, *Cankocak v. Turkey*, nos. 25182/94 and 26956/95, § 26, 20 February 2001, and *Sophia Andreou v. Turkey* (just satisfaction), no. 18360/91, § 32, 22 June 2010).

34. In connection with this, the Court notes that the administrator of the applicant’s estate has not introduced an autonomous claim concerning a

potential violation of the property rights which the successors of Mr Kostas Kalisperas might have acquired after his death, but has merely successfully requested to pursue the application lodged by the deceased (see paragraph 2 above, paragraphs 46 and 47 of the principal judgment and point 1 of its operative provisions). Under these circumstances, no alleged pecuniary damage for loss of use can be awarded for the time which has elapsed after the applicant's demise (see, *mutatis mutandis*, *Sophia Andreou* (just satisfaction), cited above, § 33, and *Solomonides v. Turkey* (just satisfaction), no. 16161/90, § 43, 27 July 2010). It is also to be noted that the documents produced by the administrator of the applicant's estate (see paragraph 6 above) show that in April and May 2010 the building sites and fields described in paragraphs 13 and 14 above were still registered in the name of Mr Kostas Kalisperas, with the sole exception of the plot of land on which his house was located (described in paragraph 14 (p) above), which was registered in the name of the company Georgike Epichrisis Kalisperas Ltd. The administrator of the applicant's estate has stated that this company belonged to the applicant (see paragraph 19 above), and no evidence to the contrary has been produced by the Government.

35. As to the Government's contention that in 1974 the field described in paragraph 14 (q) above was not registered in the applicant's name (see paragraph 28 above), the Court observes that the documents produced by the administrator of his estate in 2010 (see paragraph 6 above) show that the plot of land at issue was transferred to the applicant at some point in time before his death. In any event, it should be remembered that the objections of incompatibility *ratione materiae* with the provisions of Article 1 of Protocol No. 1 raised by the Government in respect of the properties concerned by the present application (including those of Mr Kostas Kalisperas) have been rejected by the Court (see paragraphs 72 and 119 of the principal judgment).

36. The Court has also taken note of the fact that the Government alleged that before 1974 the properties described in paragraph 13 (c), (d), (e) and (f) above were restricted under mortgage (see paragraph 29 above); however, the administrator of the applicant's estate produced evidence showing that these mortgages had been suspended and declared uncollectable by the Nicosia District Court (see paragraph 19 above).

37. In the opinion of the Court, the valuations furnished by the administrator of the applicant's estate involve a significant degree of speculation and make insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international (see *Loizidou* (just satisfaction), cited above, § 31). Accordingly, in assessing the pecuniary damage sustained by the applicant, the Court has, as far as appropriate, considered the estimates provided by the administrator of his estate (see *Xenides-Arestis v. Turkey* (just satisfaction), no. 46347/99, § 41, 7 December 2006). In general it considers

as reasonable the approach to assessing the loss suffered by the applicant with reference to the annual ground rent, calculated as a percentage of the market value of the properties, that could have been earned during the relevant period (*Loizidou* (just satisfaction), cited above, § 33, and *Demades v. Turkey* (just satisfaction), no. 16219/90, § 23, 22 April 2008). Furthermore, the Court has taken into account the uncertainties, inherent in any attempt to quantify the real losses incurred by the applicant (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 102, Series A no. 310, and (merits) 18 December 1996, § 32, *Reports* 1996-VI).

38. The Court notes that in response to its request to submit material relevant to assessing the 1974 market value of the applicant's properties, the Government have relied on the accuracy of the IPC's calculations (see paragraphs 22, 24, 25, 31 and 32 above), while the administrator of the applicant's estate has referred to several sales of comparable plots in the areas where the properties concerned by the principal judgment were located (see paragraph 17 above).

39. The Court further observes that the administrator of the applicant's estate submitted an additional claim in the form of annual compound interest in respect of the losses on account of the delay in the payment of the sums due. While the Court considers that a certain amount of compensation in the form of statutory interest should be awarded to the applicant, it finds that the rates applied by the administrator of his estate are on the high side (see, *mutatis mutandis*, *Demades* (just satisfaction), cited above, § 24).

40. Finally, the Court is of the opinion that an award should be made in respect of the anguish and feelings of helplessness and frustration which, until his death, the applicant must have experienced over the years in not being able to use his property as he saw fit and to enjoy his home (see *Demades* (just satisfaction), cited above, § 29, and *Xenides-Arestis* (just satisfaction), cited above, § 47).

41. Having regard to the above considerations, the Court is of the opinion that the sums claimed by the administrator of the applicant's estate in respect of pecuniary and non-pecuniary damage (respectively EUR 12,082,000 and EUR 187,946 – see paragraphs 16 and 18 above) are manifestly excessive. The Court considers that the amount which, according to the Government, the IPC could have offered in respect of loss of use (approximately EUR 1,202,556.22 – see paragraph 31 above) constitutes a fair basis for compensating the damage sustained by the applicant. Making its assessment on an equitable basis, the Court decides to award EUR 1,300,000 under the head of pecuniary and non-pecuniary damage.

B. Costs and expenses

42. Attached to his comments of 31 January 2011, the applicant's representative produced a "pro-forma invoice" claiming EUR 3,450 for

“studying 1999 and 2010 observations and valuation reports, preparation of observations in reply”.

43. The Court would state that, having regard to the fact that the legal issues raised by the application were similar for all the applicants, it has decided to award the total sum of EUR 15,000 to all of them (see paragraph 58 of the partial judgment on just satisfaction). This sum should be considered as covering the legal costs incurred by all the applicants. Therefore, no further award should be made under the head of costs and expenses.

C. Default interest

44. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds

(a) that the respondent State is to pay the administrator of the estate of applicant no. 9 (Mr Kostas Kalisperas), within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,300,000 (one million three hundred thousand euros) in respect of pecuniary and non-pecuniary damage, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. Dismisses the remainder of the claim for just satisfaction of applicant no. 9.

Done in English, and notified in writing on 24 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President